

SENATE BILL REPORT

ESSB 5307

As Passed Senate, February 9, 2018

Title: An act relating to creating alternatives to total confinement for certain qualifying offenders with minor children.

Brief Description: Creating alternatives to total confinement for certain qualifying offenders with minor children.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Darneille, Hasegawa, Kuderer and Chase).

Brief History:

Committee Activity: Law & Justice: 2/01/17, 1/11/18 [w/oRec-HSC].

Human Services & Corrections: 1/16/18, 1/31/18 [DPS, w/oRec].

Floor Activity:

Passed Senate: 2/09/18, 46-1.

Brief Summary of Engrossed First Substitute Bill

- Expands eligibility for participation in a family sentencing alternative program to include offenders who are convicted of nonviolent offenses and offenders who are assessed at a low risk to reoffend.
- Expands the types of parental relationships that qualify for participation in a family sentencing alternative program to include informal parenting relationships.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That it be referred without recommendation and be referred to Committee on Human Services & Corrections.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member; Angel, Assistant Ranking Member; Darneille, Frockt and Wilson.

Staff: Shani Bauer (786-7468)

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: That Substitute Senate Bill No. 5307 be substituted therefor, and the substitute bill do pass.

Signed by Senators Darneille, Chair; Dhingra, Vice Chair; Carlyle and Frockt.

Minority Report: That it be referred without recommendation.

Signed by Senators O'Ban, Ranking Member; Miloscia.

Staff: Kevin Black (786-7747)

Background: Under certain circumstances, parents with minor children who have been convicted of a non-violent, non-sex offense can receive intensive supervision as alternatives to incarceration. In 2010, the Legislature created two ways a parent may obtain a parenting alternative: (1) the Parenting Sentencing Alternative authorizing the court to waive a sentence within the standard sentence range and impose 12 months of community custody along with conditions for treatment and programming; and (2) the Community Parenting Alternative allowing the Department of Corrections (DOC) to transfer an offender to electronic home monitoring for up to the last 12 months of the parent's sentence. These alternatives are sometimes referred to collectively as a family offender sentencing alternative (FOSA).

Parenting Sentencing Alternative (PSA). In order for an offender to be eligible under PSA, the offender must:

- not have a current or prior conviction for a felony, sex, or violent offense;
- not be subject to a deportation order;
- have physical custody of their minor child or children or be a legal guardian or custodian with physical custody at the time of the offense;
- be subject to a sentence for which the high end of the sentence range is more than one year; and
- sign a release of information waiver regarding current and/or prior child welfare involvement.

The court must seek input from the Children's Administration (CA) with the Department of Social and Health Services as to whether the person has an open or prior child welfare case. If a child welfare case is found, the court must consider the CA recommendation as to placement and services needed. The court may also order DOC to complete a risk assessment report or chemical dependency screening report, to assist in making its determination. The court may bring an offender back into court at any time to evaluate the offender's progress or address violations. The court may modify the conditions of community custody, impose sanctions, or order the offender to serve a term of total confinement.

Community Parenting Alternative (CPA). To be eligible for CPA, the offender must:

- not have a current conviction for a felony sex or violent offense;
- not be subject to a deportation order;
- have physical or legal custody of a minor child;
- have a proven, established, ongoing, and substantial relationship with the child that existed prior to the commission of the current offense; and

- sign a release of information waiver regarding current and/or prior child welfare involvement.

DOC must seek input from CA and make a determination that placement would be in the best interests of the child. An offender requesting placement in the CPA must provide an approved residence and living arrangement prior to transfer. The parent may serve no more than the final 12 months of the sentence in partial confinement on electronic home monitoring. DOC has the authority to return any person serving partial confinement in the parenting program to total confinement if the person is not complying with the terms of the parenting program.

Summary of Engrossed First Substitute Bill: Certain criteria for participating in the PSA and CPA are changed to provide that an offender may participate if the offender:

- is convicted of a current offense which is a nonviolent offense, or a sex offense or violent offense and the offender is assessed at a low risk to reoffend;
- is a biological or adoptive parent, expectant parent, legal guardian, custodian, nonparental custodial, stepparent, or a person who is acknowledged as a parent figure of a minor child; and
- had physical custody or a proven, established, ongoing, and substantial relationship with the minor child at the time of the current offense.

A court may order preparation of a family impact statement when evaluating an application for a PSA. The existence of an open child welfare case does not disqualify an offender from applying or participating in the PSA and may further support a parent's participation to reduce the likelihood of termination of parental rights due to parental incarceration. DOC must assist courts in determining whether an offender applying for a PSA who has a current conviction for a sex or violent offense may be assessed at low risk to reoffend using the most current instrument available capable of yielding this determination, which may include a risk instrument in use prior to December 15, 2017.

The fact that a child-parent relationship has been terminated by a court does not preclude participation in a CPA if:

- the child and parent have been permitted ongoing contact;
- the child is legally free and has not achieved his or her permanent plan; and
- the parent's participation in the program may assist the child in achieving reinstatement of parental rights or achieving long-term permanency.

For the purposes of the PSA and CPA, a minor is defined as a child under the age of eighteen at the time of the offender's current offense.

References to the Children's Administration are updated to refer to the Department of Children, Youth, and Families.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill (Law & Justice): *Testimony from 2017 Regular Session.* PRO: This program has been in place since 2010 and has included participation of approximately 600 parents. This bill is a work in progress. There is interest from the Juvenile Rehabilitation Administration in creating a similar program for juveniles with children. The principal goal of this legislation is to shift the debate from what a person's crime is to looking at the family assessment and the low and moderate risk levels for an offense. Overcrowding issues can also be addressed through this program.

This bill expands alternatives to total confinement for parents with minor children. This doesn't mean the court will find the alternative to be appropriate in every circumstance. The court will still be able to assess a person's complete history and request a risk assessment report. Discretion will rest with the court to determine whether a prison sentence is appropriate. If a person is already sentenced and serving a sentence, DOC will retain discretion to determine whether the person is appropriate for the program. These alternatives provide a positive impact for children and reduce negative family impacts as a result of the incarceration. Parents who participate must work on improving and increasing their parenting skills.

CON: Expanding the parenting sentencing alternative to violent offenders and sex offenders is very concerning. It is not appropriate to rely on the risk assessment when you are talking about the safety of a child. When a person has committed a sex or violent offense, there is a moral accountability argument that the person should serve time in confinement. Expansion of the parenting relationship is also a concern. A significant relationship with the child could be open to broad interpretation. This suggests moving away from the custodial parent to a person who has been a parental figure. The prosecutors support the idea of reuniting parents and children and the idea of FOSA, but we are concerned about how broadly the alternative is imposed.

Persons Testifying (Law & Justice): PRO: D'Adre Cunningham, Washington Defenders' Association.

CON: Jon Tunheim, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying (Law & Justice): No one.

Staff Summary of Public Testimony on Original Bill (Human Services & Corrections): *The committee recommended a different version of the bill than what was heard.* PRO: This bill creates savings in bed costs but the greatest opportunity for savings is reduction in recidivism. This is not a new program, but it would be expanded. The idea for this bill came from a report highlighting this program that suggested expanding eligibility. I have become more passionate about this program over time. We should herald that this program reintegrates offenders with their children, which is very good for the public at large. It is short sighted to limit this program to nonviolent offenders, instead of looking at the risk of re-offense. I am an incarcerated parent and my violent crime makes me currently ineligible for the parenting program. We still parent from prison and have meaningful, loving contact with our children. Many of us if given a chance can succeed. This program is not for the

purpose of early release or leniency, but is about parenting and structured re-entry. Persons convicted for violent crimes are statistically the least likely to recidivate. Expansion would save costs and prevent children from going into foster care or permanently losing a relationship with their parents. This is a life-changing program. I do homework with my daughter over the phone from prison every week. Our children should not suffer for the poor decisions we made. This gives people a chance to reacclimate to parenting before a sudden release from prison. There is no better program. It streamlined the process of reuniting me with my six-year-old daughter. The incentive to be more child-focused was tremendously helpful to me as a person. There is counseling and parenting classes associated with the program. This program has been a lifesaver for my son; it feels like a miracle. I entered prison pregnant following a life of abuse, dysfunction, and addiction. I learned so much in this program. It helped restore my marriage; now I am opening re-entry houses for women. It was estimated in 2007, that over 800,000 inmates were parents to over 1.7 million children. That is a lot of children who need their parents. This is a smart program for justice that increases public safety. If people have family bonds and relationships with their children, the likelihood of committing further offenses decreases dramatically. By increasing the number of people eligible for this program, we will strengthen families. It is important to expand the definition of parents to include all families, including nontraditional, mixed status, and immigrant families.

OTHER: The return to prison rate on a new felony for program participants is 8 percent over seven years, compared to 34 percent in the general population. The rate is 21 percent who receive violations. The supervision model focuses on family and structure. The participants are accountable for all the time they spend in the day. We require reading with kids, participating in homework, participating in parent-teacher conferences, and family dinner without distractions from television or electronics. We partner with the Department of Early Learning to use five protective factors to strengthen families. We work with the Children's Administration to monitor child safety. We have graduates who are now attending college and have gotten career jobs, purchased a home, have kids reunited from foster care, and are developing positive co-parenting plans. The supervision model is so different that it has changed the face of how we work with offenders. There are 653 participants who have gone through the alternative since 2010. If this bill passes, we could see a 30 percent increase in referrals to the program.

Persons Testifying (Human Services & Corrections): PRO: Senator Darneille, Prime Sponsor; Deb Sheehan, Minna Long, Tanya Quinata, incarcerated at Washington Corrections Center for Women; Cole Kelly, community parenting program participant; Lisa Johnson, citizen; Kristi O'Brien, Civil Survival; Christopher Poulos, Washington Statewide Reentry Council; D'Adre Cunningham, Washington Defender Association.

OTHER: Susie Leavell, Department of Corrections.

Persons Signed In To Testify But Not Testifying (Human Services & Corrections): No one.